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6 UNITED STATES DISTRICT COURT
7 EASTERN DISTRICT OF WASHINGTON
8 SPOKANE DIVISION

9 KYLE E. NORTH,

10 Plaintiff

11 vs.

12 CITY OF PULLMAN POLICE
13 DEPARTMENT, DOUG ANDERSON, an
individual, MICHAEL SONTGERATH, an
individual, GARY JENKINS, an individual and
14 CHRISTIAN TENNANT, an individual.

15 Defendants.

16 CASE NO.

17 COMPLAINT FOR DAMAGES
BASED UPON:

- 18 (1) VIOLATION OF 42 USC§1983
(2) NEGLIGENCE
(3) DISABILITY DISCRIMINATION
(4) OUTRAGE
(5) ASSAULT
(6) BATTERY

19 **DEMAND FOR JURY TRIAL**

20 Comes now, KYLE NORTH, individually, and alleges as follows:

21 **PARTIES**

22 1. Plaintiff KYLE NORTH (“North”) is a citizen of the United States of America,
23 resides in the State of Washington and is a student at Washington State University. During the
academic year, North resides in Pullman, Washington in Whitman County. His permanent
residence is in Poulsbo, Washington in Kitsap County.

24 2. North suffers from Schizoaffective Disorder, a mental disability subject to the
25 protections of the Americans with Disabilities Act (“ADA”) and the Washington Law Against
26

COMPLAINT FOR DAMAGES - 1

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1 Discrimination (“WLAD”). North is a “qualified individual with a disability” under the ADA
 2 and WLAD.

3 3. Defendant, CITY OF PULLMAN POLICE DEPARTMENT (hereinafter “PPD”)
 4 is a municipal entity existing pursuant to and under the laws of the City of Pullman and the State
 5 of Washington. The PPD conducts its operations in the City of Pullman, located in Whitman
 6 County, Washington. The PPD is responsible for protecting the citizens of Pullman and
 7 upholding the laws of the State of Washington and the City of Pullman. The PPD receives
 8 federal funds under federal programs and statutes, including the Crime Control Act of 1973.
 9

10 4. Defendant DOUGLAS ANDERSON (hereinafter “Officer Anderson”) is a law
 11 enforcement officer employed by the PPD. Officer Anderson has a duty to protect and serve the
 12 individuals within the PPD’s jurisdiction and to enforce the governing laws. At all times alleged
 13 herein, Officer Anderson was acting within the course and scope of his employment with the
 14 PPD and under the color of law. North is informed and believes that Officer Anderson resides in
 15 Whitman County Washington.
 16

17 5. Defendant MICHAEL SONTGERATH (hereinafter “Officer Sontgerath”) is a
 18 law enforcement officer employed by the PPD. Officer Sontgerath has a duty to protect and
 19 serve the individuals within the PPD’s jurisdiction and to enforce the governing laws. At all
 20 times alleged herein, Officer Sontgerath was acting within the course and scope of his
 21 employment with the PPD and under the color of law. North is informed and believes that
 22 Officer Sontgerath resides in Whitman County Washington.
 23

24 6. Defendant GARY JENKINS (hereinafter “Chief Jenkins”) is the PPD Chief of
 25 Police. Chief Jenkins is responsible for planning, creating, implementing and enforcing all
 26 policies of the PPD. Chief Jenkins is responsible for ensuring that all PPD officers receive

DEMAND FOR JURY TRIAL - 2

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1 ongoing “use of force” training and is responsible to approving all instructors charged with
 2 delivering use of force training. Chief Jenkins is responsible for ensuring that all PPD officers
 3 carry out their duties consistent with their training and in compliance with all PPD policies and
 4 all governing laws. Chief Jenkins is required to approve every instance in which an officer is
 5 issued a taser gun. North is informed and believes that Chief Jenkins resides in Whitman County
 6 Washington.
 7

8 7. Defendant CHRISTIAN TENNANT (“hereinafter “Commander Tennant”) is the
 9 PPD Operations Commander. Commander Tennant is responsible for investigating allegations
 10 of police misconduct and recommending appropriate remedial and disciplinary action.
 11 Commander Tennant is also responsible for managing PPD officer training and for ensuring that
 12 PPD officers complete all required training and that the training received is effective. As the
 13 Operations Commander, Commander Tennant serves as the Acting Chief of Police in Chief
 14 Jenkin’s absence. Commander Tennant reports directly to Chief Jenkins. North is informed and
 15 believes that Commander Tennant resides in Whitman County Washington.
 16

17 8. North is informed and believes and thereon alleges that the acts and omissions
 18 alleged herein were carried out within the course and scope of the defendants’ employment with
 19 the PPD and pursuant to and consistent with a policy, custom and/or practice of the PPD,
 20 including a policy of inaction. The PPD, Chief Jenkins and Commander Tennant ratified the
 21 conduct of each of the individual defendants named herein and all defendants acted with
 22 deliberate and intentional indifference and/or willful disregard for the rights, safety and well-
 23 being of North.
 24

25 9. North is informed and believes and thereon alleges that each defendant named in
 26 this Complaint is the agent, servant and employee of the other defendants herein, and was at all

DEMAND FOR JURY TRIAL - 3

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times acting within the course and scope of said agency and employment and with the consent and permission of each of the other co-defendants.

10. The acts and omissions of Officer Anderson, Officer Sontgerath, Chief Jenkins and Commander Tennant, as alleged herein, were carried out for the benefit of their respective marital communities.

JURISDICTION & VENUE

11. This action arises under the Fourth Amendment to the United States Constitution, and other federal laws, including but not limited to the ADA. This Court has original jurisdiction of this matter pursuant to 28 USC §§1331(federal question jurisdiction) and §1333 (federal civil rights jurisdiction). This Court has supplemental jurisdiction pursuant to 28 USC §1337 to hear all related state law claims. Venue is proper in this district pursuant to 28 USC §1339 because all the defendants reside in this judicial district.

12. North provided the defendants with written notice of this claim on February 15, 2018 and has complied with all other requirements of RCW 4.92.110.

FACTUAL ALLEGATIONS

13. Local police serve the community to two separate roles - as law enforcement officers and as community caretakers. These are two distinct functions and different types of training are required in order to ensure that police officers are able to safely and effectively carry out both roles.

POLICE TRAINING

14. With respect to the law enforcement function, officers are required to undergo ongoing training on the “use of force” so that they are able to safely and effectively respond to situations of suspected criminal activity. When acting as in the capacity of a community

DEMAND FOR JURY TRIAL - 4

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1 caretaker, officers are called upon in non-criminal situations for the purpose of providing health
 2 and/or safety assistance to citizens in need. In order to safely and effectively aid a person with a
 3 mental health disorder, the law requires police officers to complete specialized training on
 4 mental health issues. The eight-hour course, entitled Crisis Intervention Training (“CIT”), is
 5 conducted by the Washington State Criminal Justice Training Commission (“WSCJTC”).
 6

Mental Health and Crisis Intervention Training

7 15. There are two parts to the CIT curriculum. The first part teaches law enforcement
 8 officers how to recognize the indicators of a mental health disorder. The second part teaches the
 9 skills necessary to de-escalate a person in an excited state and maintain a calm, non-threatening
 10 environment until a mental health professional is able to take over with the needed care and
 11 services.
 12

13 16. Regarding the first objective, officers are not required to identify a particular
 14 diagnosis, nor is a diagnosis required or relevant. Rather, the training identifies certain key
 15 behaviors that indicate the existence of a mental health disorder, irrespective of whether drugs or
 16 alcohol may also be involved. Officers also learn that, although behaviors secondary to mental
 17 illness can be unsettling, they do not indicate a propensity for violence. In fact, the training has
 18 been shown to increase empathy and tolerance for those with mental health disorders.
 19

20 17. Schizophrenia and Schizoaffective Disorder (referred to collectively as
 21 “Schizophrenia”) is one of the most common mental health disorders that police officers
 22 encounter in the line of duty. Behaviors secondary to Schizophrenia are easily recognized and
 23 include: 1) auditory hallucinations (hearing voices, including some that are hostile, threatening or
 24 accusatory); 2) delusions (experiencing irrational fear, paranoia or mistrust of others); 3)
 25

26 DEMAND FOR JURY TRIAL - 5

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1 disorganized thinking and speech (lack of coherence and/or mind going “blank”); and 4) muscle
 2 twitches (tremor or tic-like jerking of fingers, hands, limbs and/or facial muscles).

3 18. The second part of CIT teaches officers how to responds once it is determined that
 4 a mental health issue is presented. First and foremost, physical force is anathema to CIT. In
 5 fact, research has shown that traditional law enforcement tactics, such as force, threats and
 6 shouting are not only ineffective, they often exacerbate the situation and greatly increase the risk
 7 of harm. Rather, CIT instructs police officers that all interactions must be designed to de-
 8 escalate the situation so that the subject can obtain the needed treatment and services without
 9 suffering injuries. The fundamentals tenets of CIT, include:

10 (a) Exercise Self Control: Remain calm and unemotional. Don’t raise your voice,
 11 shout or scream. Seek to develop trust.

12 (b) Allow Physical Space: Allow the subject significant personal space and avoid
 13 even non-confrontational physical contact.

14 (c) Actively Listen: Gather information needed to obtain the necessary help and
 15 listen to answers provided. Do not debate the “reality” of a delusion or
 16 hallucination.

17 (d) Do Not Make Demands: Abandon the need to “win” on a debated point. Do not
 18 insist on authoritative deference. Do not demand behavioral compliance with
 19 standard commands such as “stand,” “sit,” or “turn around.”

20 (e) Do Not Make Threats: Do not threaten the subject with punishment or
 21 consequence.

22 (f) Do Not Use Physical Force: Do not use any type of physical force unless
 23 absolutely necessary to prevent imminent risk of serious harm.

DEMAND FOR JURY TRIAL - 6

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(g) **Remain Patient**: Do not attempt to resolve the matter quickly. A police response to a mental health crisis takes, on the average, three times as long to resolve as a response to a law enforcement call.

19. Officers Anderson and Sontgerath completed the required CIT course on March 30 and 31, 2016, respectively. As such, they were trained on the foregoing tenets and the standard of care applicable to the situation presented here and had actual knowledge of techniques required to safely intervene in a mental health crisis.

Use of Force Training

20. Police officers are authorized to use various methods of force when carrying out law enforcement duties. Included in these methods are a taser gun and a lateral vascular neck restraint (“LVNR”). Both methods require specialized training before they can be used in the line of duty. In addition to technical skills, the PPD Policy and Procedures Manual (hereinafter “PPD Policy Manual”) requires all officers to undergo specialized training designed to “enhance the member’s discretion, judgment and skill in using use of force options.”

Taser Guns

21. In order to use a taser gun in the line of duty, all PPD officers are required to successfully complete a six-hour certification course. The course curriculum is developed by Taser International (now Axon Enterprise, Inc.), the manufacturer of the taser guns used by the PPD. Thereafter, all officers must complete an annual two-hour re-certification course and pass a functional two-cartridge deployment test. Any officer who fails to complete and pass the annual re-certification training is not permitted to use a taser gun. In fact, the PPD Policy Manual provides that an officer who fails successfully complete the re-certification training is not permitted to *carry* a taser and will not be issued one.

DEMAND FOR JURY TRIAL - 7

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1 22. Officer Anderson did not participate in taser re-certification training in 2015 or
 2 2016 and was he not authorized to carry or use a taser at the time of the incident alleged herein.

3 ***Lateral Vascular Neck Restraint***

4 23. LVNR is a force technique used to restrain a criminal suspect who is resisting
 5 arrest. It works by reducing the circulation of blood to the brain until the suspect either stops
 6 resisting or loses consciousness. The officer places his or her arm around the neck of the suspect
 7 and applies pressure to the carotid arteries on either side of the neck and then increases the
 8 pressure until the objective is achieved. While LVNR is an effective law enforcement tool, it is
 9 extremely dangerous if not performed correctly. As such, officers wanting to employ the
 10 technique must first complete an eight-hour training course developed by the National Law
 11 Enforcement Training Center. As with taser training, the PPD Policy manual requires all PPD
 12 officers to successfully complete an annual recertification training course. Officers who fail to
 13 complete that annual recertification training are not authorized to use LVNR.
 14

15 24. Officer Anderson did not undergo LVNR re-certification training in any year after
 16 2013 and was not authorized to use LVNR at the time of the events alleged herein.

18 **ALLEGATIONS GIVING RISE TO CLAIM**

19 25. On the evening of August 17, 2016, North drove to Moscow, Idaho with friend
 20 and fellow student, Adrienne Fountain. Over the course of the evening, Fountain noticed North
 21 exhibiting odd behavior. As the evening progressed, North grew increasingly paranoid and
 22 expressed concern that he was being followed. Around midnight, North told Fountain that he
 23 wanted to be alone and he drove off in his 2001 grey Lexus. At that time, neither remembered
 24 that Fountain's wallet and phone was still in North's Lexus.
 25

26 DEMAND FOR JURY TRIAL - 8

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1 26. Given North's odd behavior and concerned for his safety, Fountain contacted the
 2 Moscow Police Department and spoke with officer Joe Knickerbocker. Fountain described
 3 North's strange behavior and that he feared people were tracking him by his cell phone.
 4 Knickerbocker asked if North was intoxicated or under the influence of drugs and Fountain
 5 confirmed that he was not. Fountain also denied concern that North might harm himself.

6 **Pullman Police Conduct Welfare Check on North**

7 27. The Moscow police issued a welfare check and contacted the Pullman Police
 8 Department for assistance. Officer Sontgerath was on duty at the time and responded to the
 9 request by searching for North's Lexus around NE Lower Drive in Pullman. Unable to find
 10 North or his Lexus, Officer Sontgerath deemed the matter closed.

12 28. At 3:12am on the morning of August 18, 2016, North walked into the Jack in the
 13 Box restaurant on NE Stadium Way in Pullman (hereinafter "JIB") and approached the night
 14 manager, Olin Braun. Braun noted that North looked scared. North told Braun that he feared
 15 people were following him with the intent to do harm and that he needed police protection.
 16 Braun gave North a paper cup for the water dispenser and tried to assure North that no one was
 17 following him. Hesitant to get the police involved, Braun asked North if he was sure that he
 18 wanted police assistance. North insisted, stating that he would feel better if he could sit down
 19 and talk with a police officer. Braun called 911 as requested.

21
 22
 23 ***Officers Anderson and Sontgerath Arrive at JIB***

25 29. Officer Sontgerath and Officer Anderson arrived at JIB approximately ten
 26 minutes later in separate squad cars. Both were wearing police body cams that captured the

DEMAND FOR JURY TRIAL - 9

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1 events that followed, on video and audio. The events were also captured on JIB's surveillance
 2 system which is comprised of four cameras positioned throughout the restaurant.

3 30. Upon entering the restaurant, both officers knew that North was the subject of the
 4 earlier welfare check issued by the Moscow Police Department. In addition, both witnessed
 5 North exhibiting obvious and objective indications of a significant mental health disorder. In a
 6 disjointed and confusing narrative, North stated that Fountain was missing and that he needed
 7 their help to find her. He also stated that he was concerned for his safety and for Fountain's
 8 safety. North stated that he was not feeling well and that everything was a "blur." Throughout
 9 this time, North was rapidly rotating his right-hand, side to side, in quick short motions, while
 10 snapping his right-hand fingers.

12 31. While talking with the officers, North discovered Fountain's wallet and phone in
 13 his pocket. He grew visibly alarmed and confused and told the officers that he was "freaking
 14 out." During this time Officers Sontgerath and Anderson confirmed that Fountain was not
 15 missing and not in danger but, rather, was the person who requested the welfare check hours
 16 earlier. Officer Sontgerath searched North's person and did not find any weapons, alcohol or
 17 illegal drugs.

19 32. Despite North's concern for Fountain, the officers made no effort to assure North
 20 that Fountain was safe. North asked Officer Sontgerath if the two could sit down and talk.
 21 Officer Sontgerath refused.

23 ***Plan to go to the Hospital***

25 33. Officer Sontgerath asked North if he wanted to go to the hospital where he could
 26 talk with a mental health professional. North said that he did, provided that Officer Sontgerath

DEMAND FOR JURY TRIAL - 10

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would escort him there. Officer Sontgerath agreed. After confirming that North was not under the influence of alcohol or drugs, a plan was reached whereby Officer Sontgerath would drive his squad car to the hospital and North would follow directly behind in his Lexus.

34. As this discussion was happening, North was overcome by an auditory hallucination. In response to voices that appeared to be coming from his left side, North uttered the following words:

North: "Oh! Oh! Oh my God! Uh... Wow... Oh my Go... Oh! Oh!
Oh! This is happening."

35. Officer Sontgerath witnessed the hallucination and responded: "What Kyle?" North continued conversing with the voice to his left and then turned back to Officer Sontgerath and the two exchanged the following words:

North: "I need. . . I need help."

Officer Sontgerath: "I know, that is why we are going to the hospital."

North: "Thank you for helping me."

36. North stood up and moved toward the door. Remained convinced that there were people outside that wanted to hurt him, North asked Officer Sontgerath to go out the door first. This would have positioned North safely between two police officers as he moved through the parking lot and to his Lexus. Officer Sontgerath refused, stating: "Nope. I'm walking behind you. You are not walking behind me."

37. Visibly alarmed and confused, North began to walk backward, away from the officers, and stated: "But I'm following you there?" By this time, thirteen minutes had passed since Officer Sontgerath arrived at JIB and he was running out of patience. In an annoyed tone, Officer Sontgerath responded: "I'm not here to play games, Kyle."

1 38. The tone and content of Officer Sontgerath's words were sufficient to obliterate
 2 any trust that may have developed, and North moved away from the exit door and back to the
 3 area next to the service counter where he previously waited for the officers' arrival.

4 39. Contrary to the basic tenets of the crisis intervention training that the officers
 5 received only five months earlier, Officers Sontgerath and Anderson **yelled** at North and
 6 **threatened him with arrest** if he walked behind the customer counter. North assured the officers
 7 that he did not intend to go behind the customer counter but simply wanted to remain standing
 8 against the wall next to the counter. Although North was not accused of any criminal activity
 9 and although no one at JIB had requested North's removal, the officers **demanded** that North
 10 leave the restaurant so that JIB could "run a business."

12 40. Without any probable cause to detain North, Officer Sontgerath advised North
 13 that if he did not agree to leave voluntarily, the officers would take him involuntarily. North was
 14 visibly stunned as he tried to process how his call for police help went so terribly wrong. He
 15 turned to the JIB employees and, with a nervous and perplexed tone, said: "What are they trying
 16 to do to me?"

18 41. North then turned back to the officers and, with his hands clasped together in a
 19 "pretty please" gesture, said that he wanted to call his parents. North was then overcome by
 20 another auditory hallucination. This time, the voices appeared to be coming from both his left
 21 and right sides. North quickly regained his composure and said: "I just want a drink of water."

22 **Unconstitutional Force and Seizure**

24 42. As North started toward the water dispenser, Officer Sontgerath grabbed North by
 25 both wrists, pushed him back against the wall next to the customer counter. In a threatening and
 26 authoritative tone said: "Don't you. . ." In response, North pleaded: "Please don't." Officer

Sontgerath responded: "If you fight me, you are going to get hurt." Clearly terrified, North responded: "Yes sir."

43. Officer Sontgerath then grabbed North's right arm and Officer Anderson grabbed North's left arm. North offered no resistance. Officer Sontgerath repeated his prior warning and told North: "You are going to get hurt." Both officers then pulled North's arms behind his back as they pushed him to his knees and then face-down on the floor. North did not resist in any way, physically or verbally. Then, in a calm and bone-chilling voice, Officer Sontgerath informed North:

Officer Sontgerath: "You *are* going to get hurt, buddy."

44. Seconds after Officer Sontgerath uttered his threat, North screamed out in pain as Officer Sontgerath broke North's right arm at the medial and lateral epicondyles and dislocated his elbow. The force used to inflict the injury was so great that it ripped the collateral and annular ligaments completely off the bones underneath. In excruciating pain, North screamed out for help:

North: "He broke my arm! He broke my arm! Help me! God help me!"

Don't let them do this."

45. Officer Sontgerath did not acknowledge the injury he inflicted, dismissed the pleas for help and proceeded to place North in handcuffs. Officer Sontgerath informed North that he was in "protective custody," that he was going to the hospital and that he would be expected to "cooperate." By then North had fallen silent.

46. Due to the magnitude of the ligament tears, North was developing rhabdomyolysis - a serious condition in which damaged skeletal muscles rapidly break down and release myoglobin into the blood stream. Officer Sontgerath showed no concern for North's

welfare but, rather, demanded that he acknowledge and defer to Officer Sontgerath's authority
and to do exactly as instructed:

Officer Sontgerath: "Do you hear me?"

North: [no audible response]

Officer Sontgerath: "If you continue to be a problem you are going to get
dropped on your ass again, do you understand that?"

North [faintly audible]: "Yes sir."

47. At this point, North was reasonably terrified of these officers. Officer Sontgerath
sadistically informed North that he was going to hurt him, and he did – despite North's total non-
resistance. North needed emergency medical attention. The officers did not indicate that they
would seek medical help. To the contrary, they threatened to "drop him on his ass." North had
no idea what the officers might do next, let alone where they might be taking him.

48. The officers pulled North to his feet and ordered him to walk toward the side door
of the restaurant. As they passed the office, North hooked his leg inside the office door and fell
to the ground, with his upper torso in the office and his right leg extended out to the customer
counter and shouted out:

North: "Don't let them take me! Please! Call somebody! All of you!"

Hey! No! No! No! Hey! Somebody stop them! Somebody stop them!
Somebody!"

49. Officer Sontgerath asked one of the JIB employees to call the paramedics stating
that North would need to be transported to the hospital. With North face down on the floor and
his hands cuffed behind him, Anderson pressed down on North's injured right arm. As North
screamed out in pain, Anderson shouted:

DEMAND FOR JURY TRIAL - 14

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1 **Anderson:** "You're gonna get tased in a second. Knock it off!"

2 50. North then began to pray quietly. Anderson continued shouting at North and
3 demanded that he straighten out his legs. Officer Sontgerath responded stating: "he's not going
4 anywhere."

5 **Officers Tase and Choke North While he is Handcuffed**

6 51. North remained still and face down on the floor, praying. He prayed for the
7 officers and their families and asked that God forgive them "for they know not what they do."
8 He prayed that the officers would "see the light" and "feel God's love" and that God would "cast
9 out all evil." In an annoyed and indignant tone, Officer Anderson told North:
10

11 **Anderson:** "You should pray for yourself."

12 52. While waiting for the paramedics to arrive, North remained handcuffed and face-
13 down on the office floor, praying quietly. After about six minutes passed, the officers decided
14 that they would remove North from the office before he would receive medical aid. Officer
15 Sontgerath grabbed North's right leg and Officer Anderson grabbed North's right broken arm
16 and they attempted to drag North across the floor, out of the office. North screamed out in pain
17 and pushed off the office wall with his left leg. North ended up under the desk with his head
18 between a metal rack and a filing cabinet.
19

20 53. Officer Anderson grabbed North by the right arm and attempted to lift him to a
21 standing position with the entirety of North's body weight being raised by the fractured and
22 dislocated arm. North screamed out in pain. Officer Anderson then flew into a rage. He
23 removed his taser from his belt and tased North three times in rapid succession while screaming:
24

25 **Anderson:** "Get out! Get out! Get out!"
26

1 54. The taser report reveals that Officer Anderson dispensed 16 seconds of electrical
 2 current into North's body over a period of 21 seconds. North pleaded: "I repent, I repent, I
 3 repent." Officer Anderson then pressed the side of North's face into the floor and stated:

4 **Anderson:** "I'm gonna put you out."

5 North pleaded for mercy uttering:

6 **North:** "Yes sir. I'm going. I'm going. You have my word. You have
 7 my word. You have my word. Oh, please. Please help!"

8 55. As North was pleading for help, Officer Anderson placed his left arm around
 9 North's neck in a lateral vascular neck restraint and, by the neck, pulled North's body to a
 10 standing position while screaming at North to "get up."

11 56. Officer Anderson continued pulling back on North's neck until his feet were no
 12 longer flat on the floor and his body weight was suspended entirely by Anderson's arm around
 13 North's neck. North uttered "help me" and moaned faintly before falling silent. Officer
 14 Anderson asked Officer Sontgerath if North was "out." Officer Sontgerath confirmed and they
 15 lowered North to floor.

16 57. While North was unconscious on the floor, Officer Sontgerath pulled North by the
 17 left arm to the area just outside the office. Officer Anderson stood behind North and, with his
 18 feet, pushed North across the tile floor. North remained unconscious for 22 seconds. Upon
 19 waking, North saw the paramedics surrounding him and said: "Oh! My God! Men, can you help
 20 me?"

21 **North Receives Medical Aid**

22 58. The paramedics administered Ketamine and had Officer Sontgerath remove the
 23 handcuffs. North was then placed on a gurney and taken to the Emergency Room at Pullman

DEMAND FOR JURY TRIAL - 16

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1 Regional Hospital (“PRH”). In addition to the arm injury, North had abrasions his head, back,
 2 shoulders, neck, chest, lower lip and knees as well as bruising.

3 59. The attending physician, Dr. Larry Brown, asked Officer Sontgerath to explain
 4 how the injuries happened. Officer Sontgerath admitted that he took North’s right arm, put it
 5 behind his back and “reamed on it.” In an attempt to justify the degree of force used, Officer
 6 Sontgerath said that North was combative and that the officers had “no choice” if they wanted to
 7 return home safely to their families. Officer Sontgerath did not advise Dr. Brown that,
 8 subsequent to the fracture sustained at the time of cuffing, the officers repeatedly pulled on
 9 North’s right arm and pressed down on his right shoulder. Nor did the officers advise Dr. Brown
 10 that, subsequent to the arm fracture, and after restraining North with handcuffs, they tased him
 11 three times and choked him into unconsciousness.

13 60. Regarding the cuts and bruises on North’s body, Officer Sontgerath conceded that
 14 some were from the altercation at JIB but claimed that others pre-existed the altercation. North
 15 did not have any injuries or abrasions when he arrived at JIB

17 61. North was diagnosed with:1) acute psychosis with agitation; 2) a right elbow
 18 fracture; 3) a right elbow dislocation; and 4) rhabdomyolysis. PRH records state that the elbow
 19 fracture was “secondary to trauma from police intervention for combativeness.”

20 62. Both Officer Anderson and Officer Sontgerath completed a post-incident “Use of
 21 Force Report.” Commander Chris Tennant and Chief Jenkins reviewed both reports as well as
 22 both body cam videos. Despite this review, no corrective action was taken against either officer
 23 and no further investigation was conducted. Anderson’s taser was not confiscated and the taser
 24 log reveals that he continued to actively use it, despite his lack of certification. Remarkably,

26 DEMAND FOR JURY TRIAL - 17

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1 Commander Tennant's report states that the incident was ***not*** crisis intervention related and,
2 contrary to all evidence, indicates that North was under the influence of intoxicants.

3 63. After being released from the hospital, North withdrew from Washington State
4 University and returned home to Poulsbo, Washington where he underwent surgery on his arm.
5 While North has regained the use of his arm, the force of the injury resulted in a permanent
6 reduction in his range of motion. As a result of the extensive cartilage damage, the functioning
7 in North's elbow is permanently compromised and will remain highly susceptible to further
8 injury, pain and reduced functioning.

10 64. As a result of the conduct of the defendants, North has suffered and will continue
11 to suffer emotional and mental injury and distress and permanent physical injury.

FIRST CLAIM FOR RELIEF
Violation of 42 USC § 1983: The Fourth Amendment

14 65. Plaintiff repeats, re-alleges and incorporates herein by reference the allegations of
15 paragraphs 1 through 64, as though set forth at length.

16 66. The Fourth Amendment to the United States Constitution guarantees North the
17 right to be free from unreasonable seizures of his person. An arrest without probable cause
18 violates the protections of the Fourth Amendment.

20 67. Police officers are permitted to take a mentally ill person into protective custody
21 and to use force upon such person only when there is reasonable cause to belief that the mentally
22 ill person presents imminent risk of harm to himself or others. RCW 71.05.153, RCW
23 9A.16.020(6) and RCW 9A.16.040. Without objective evidence of such a risk, police have no
24 right to detain the mentally ill person.

DEMAND FOR JURY TRIAL - 18

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1 68. North was not accused of any criminal activity nor was he the subject of any civil
 2 complaint. There was no evidence that North presented any risk of harm to himself or others, let
 3 alone an “imminent risk of serious harm.” North made no threatening comments or gestures and
 4 did not have a weapon. Because Officers Anderson and Sontgerath had no grounds to take North
 5 into custody, the seizure of his person was in violation of the Fourth Amendment.

6 69. In addition to the wrongful seizure of North’s person, Officers Anderson and
 7 Sontgerath violated North’s Fourth Amendment right to be free from unreasonable seizures and
 8 excessive force. In order to be reasonable, each use of force must be separately justified with a
 9 legitimate government interest.

10 70. By 3:40am, North was handcuffed and face down on the floor of the JIB office.
 11 The force used to accomplish the arm injury was so severe that rhabdomyolysis was setting in
 12 and North was growing increasingly sick. The police audio recording captures Officer
 13 Sontgerath conceding “he isn’t going anywhere.” Stated otherwise, North was completely
 14 incapacitated. There was absolutely no risk that he could harm himself or others. He certainly
 15 could no flee. Despite being incapacitated and fully restrained, Officer Anderson tased North
 16 three times in rapid succession, pulled him to a standing position by his neck and choked him
 17 into unconsciousness. Officer Anderson used additional force by repeatedly pulling and pressing
 18 on North’s injured right arm. There were no governmental interests served in connection with
 19 this force and its use was a violation of North’s Fourth Amendment rights.

20 71. The defendants further violated North’s Fourth Amendment rights by:
 21 a) Subjecting him to force exercised by an untrained officer not qualified or
 22 authorized to employ the force methods used;

23 DEMAND FOR JURY TRIAL - 19

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- 1 b) Subjecting North to unsafe levels of taser current contrary to the safety
- 2 guidelines set forth in the training materials and all governing standards;
- 3 c) Failing to implement the crisis intervention and de-escalation techniques
- 4 taught during the March 2016 CIT course; and
- 5 d) Continuing to subject North to unnecessary and excessive force, even after
- 6 medics were on the scene and despite North's repeated pleas for medical aid.

72. Chief Jenkins and Commander Tennant are responsible for ensuring that all PPD
 8 officers are properly trained and that they carry out their duties consistent with such training and
 9 in compliance with the law and PPD policies.

11 73. Chief Jenkins is responsible for approving all instances in which an officer is
 12 issued a taser gun. Chief Jenkins and Commander Tennant knew that Officer Anderson had not
 13 completed the required re-certification training that was a prerequisite for the issuance of a taser.
 14 Despite this knowledge the PDD issued Officer Anderson a taser gun and permitted him to use it
 15 in the line of duty.

17 74. Anytime an officer uses a taser, electronic data from the taser gun is automatically
 18 downloaded to an evidence database. This evidence log reveals that Officer Anderson used his
 19 taser gun on other victims before and after the incident involving North. As such, Chief Jenkins
 20 and Commander Tennant were on notice prior to August 18, 2016 that Officer Anderson was
 21 using a taser in violation of PDD policy and the manufacturers training requirements.

22 75. Chief Jenkins and Commander Tennant were also aware that, in the 18 months
 23 prior to the North incident, Officer Anderson failed to attend numerous other scheduled training
 24 sessions. In addition to his failure to attend the taser re-certification course, Officer Anderson
 25 failed to attend "Less Lethal Considerations," "Responding to People with Alzheimer's" and

DEMAND FOR JURY TRIAL - 20

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1 "Defensive Tactics." Chief Jenkins and Commander Tennant were also aware that Officer
 2 Anderson had not received LVNR re-certification training in any year since 2013.

3 76. Prior to August 18, 2016, Chief Jenkins and Commander Tennant were aware of
 4 numerous citizen complaints regarding Anderson's combative temperament and his disregard for
 5 the rights of the very citizens that he is charged with protecting. Many of the complaints arise
 6 out of allegations of a hair-trigger temper in which Officer Anderson threatens, berates and/or
 7 belittles a citizen. Despite investigations that revealed the merits of these complaints, the PDD
 8 took no corrective action. Nor did the PDD act to ensure that Officer Anderson was mentally
 9 and emotionally capable of carrying out his duties consistent with the constitutional rights of
 10 citizens and in conformity with police training.

12 77. Chief Jenkins and Commander Tennant are responsible for supervising Officer
 13 Anderson and Officer Sontgerath. They knew that Officer Anderson had not completed taser re-
 14 certification training but issued him a taser anyway. They knew that Officer Anderson was using
 15 his taser gun in an abusive and dangerous manner but failed to confiscate it. They knew that
 16 Officer Anderson failed to engage in other use of force training necessary to ensure that he
 17 carried out his duties in a safe manner. They knew that Officer Anderson presented a risk of
 18 harm and was not qualified to respond to a welfare check. Nonetheless, the PDD dispatched
 19 Anderson to respond on August 18, 2016. Such conduct constitutes an intentional, willful,
 20 reckless and careless disregard for North's safety and wellbeing.

22 78. The conduct alleged herein is part of a longstanding PPD policy, practice or
 23 custom and was ratified by Chief Jenkins and Commander Tennant. All defendants acted with a
 24 reckless or callous indifference to the rights and well-being of North.
 25

26 DEMAND FOR JURY TRIAL - 21

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1 79. North is informed and believes that no disciplinary or corrective action has been
 2 taken against any officer in connection with the events of August 18, 2016. North is informed
 3 and believes that no meaningful investigation was conducted into the incident alleged herein and
 4 that no action has been taken to prevent a recurrence of these events in the future.

5 80. North is informed and believes that no action has been taken to ensure that Officer
 6 Anderson is mentally and emotionally capable of responding a situation involving a mental
 7 health crisis. The PDD did not confiscate Anderson's taser gun and he continued to use it on
 8 other citizens after August 18, 2016, despite his lack of re-certification training.

10 81. North's constitutional right to be free from the wrongful seizure and excessive
 11 force is well-established and any reasonable police officer would recognize it as such. It is
 12 beyond legitimate debate that a person who is not suspected of criminal activity and who does
 13 not present an imminent risk of harm has a constitutional right to be free from police custody and
 14 police force. Regarding taser force, the law is well-established that a mentally ill person has the
 15 right to be free from taser force unless there are objective indicators that such person presents a
 16 serious risk of imminent harm. This right was clearly articulated in the 2009 Ninth Circuit
 17 seminal decision in *Bryan v. MacPherson*, 590 F.3d 767 (9th Cir. 2009). The rule in *Bryan* is
 18 now so well established that the Taser International recertification course materials declare it to
 19 be ***definitively unlawful*** to use a taser on a mentally ill person who does not present an imminent
 20 risk of harm.

22 82. All defendants herein were aware that North had the foregoing well-established
 23 rights. In fact, in 2010 the PPD dedicated an entire training session on the holding in *Bryan*.
 24 Officers Anderson and Sontgerath attended the training. Commander Tennant was the instructor.
 25

26 DEMAND FOR JURY TRIAL - 22

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83. As a direct and proximate result of this conduct, North has suffered and continues to suffer severe emotional distress, mental anguish and permanent physical injury.

SECOND CLAIM FOR RELIEF
Negligence

84. Plaintiff repeats, re-alleges and incorporates herein by reference the allegations of paragraphs 1 through 64 and 66 through 83, inclusive, as though set forth at length.

85. The defendants had a duty to defend and protect North and to act in compliance with the governing standard of care, all police training, the PPD Policy Manual, the governing law and the federal and state constitutions. The defendants breached their duty by failing to act in compliance with the governing standard, training, polices and laws as set forth herein.

Failure to Implement CIT

86. Although only five months had passed since the officers underwent crisis intervention training, they failed and refused to implement even the most basic aspects of the training, including but not limited to:

- a) Using physical force to wrongfully take North into custody.
 - b) Refusing to sit down and talk with North, despite his repeated request.
 - c) Refusing to allow North to walk between the officers through the parking lot on his way to the car.
 - d) Screaming at North and threatening him with arrest, involuntary custody, and physical harm.
 - e) Failing to bring about a sense of calm and trust, but, rather, dramatically escalating the crisis

DEMAND FOR JURY TRIAL - 23

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- 1 f) Failing to make a phone available to North when he expressed the desire to
2 call his parents.
- 3 g) Failing to provide North with reassuring information regarding Fountain's
4 safety.
- 5 **h)** Subjecting North to taser and LVNR force even after the paramedics had
6 arrived and were capable of taking over.

7 87. Rather than showing North compassion and support, the officers mocked him for
8 exhibiting disability related behaviors. As a result of involuntary jerking arm movements, North
9 spilled water from the cup in his hand. Officer Anderson chastised North for "throwing water all
10 over the floor." During this time, North was in a heightened paranoid state consistent with a
11 schizophrenic episode and became anxious when Officer Sontgerath started writing a number on
12 his arm. North asked why he was writing on his skin. Officer Anderson responded: "He is a
13 grown man. He can do whatever he wants." North also became alarmed when he noticed that
14 Officer Sontgerath was wearing gloves and asked why. In a dismissive and belittling tone,
15 Officer Anderson stated: "He has been wearing them since we got here."

16 88. Prior to the officers' arrival, North was talking with the JIB employees and
17 mentioned that used to work at a JIB restaurant near his home in Poulsbo. After the officers
18 broke his arm, North screamed out to the JIB employees for help, stating "I'm one of you."
19 Officer Anderson dismissed the veracity of the claim and curtly declared: "you don't work here."

20 89. After the arm fracture and while North was laying handcuffed on the floor, he
21 began to pray. At one point, he prayed that the officers be forgiven. Officer Anderson
22 responded with "we haven't done anything wrong. You should pray for yourself." As North
23 continued to pray, Officer Anderson demanded that North stop his "babbling." While in the

1 parking lot and with North in the ambulance a few feet away, Officer Anderson laughed about
 2 North's praying. He further stated that it is *North* who has the "inner demons."

3 90. The PPD, Chief Jenkins and Commander Tennant breach their duty of care in that
 4 they: 1) issued a taser gun to Officer Anderson knowing that he was not trained or qualified to
 5 use it; 2) permitted Officer Anderson to respond to calls requiring crisis intervention skills
 6 knowing that he was unwilling or unable to safely perform in such circumstances; and 3) failed
 7 to ensure that Officers Anderson and Sontgerath carried out their duties consistent with their
 8 police training.

10 **Misrepresentation Regarding Facts**

11 91. Police officers have a duty to accurately report facts surrounding an incident. The
 12 defendants here not only failed to accurately report the facts, they affirmatively misrepresented
 13 them.

14 92. Officers Anderson and Sontgerath advised dispatch, the medics and the medical
 15 providers at PRH that North was under the influence of drugs. Both knew that North was not
 16 under the influence and that their statements were untrue. Fountain denied that North had taken
 17 drugs. A search of North's car and person did not produce drugs or evidence thereof. Officer
 18 Sontgerath was completely comfortable allowing North to drive himself to the hospital. Indeed
 19 his written report reveals that repeatedly confirmed that North was safe to drive. Although the
 20 record is completely devoid of any drug use, Commander Tennant's report of the incident also
 21 claims that drugs were involved. Remarkably, Commander Tennant's report also states that the
 22 incident did not require a crisis intervention.

23 93. The officers also misrepresented facts regarding North's behavior in an attempt to
 24 justify their unconstitutional use of force. Specifically, the officers claim that North resisted the

1 Officer Anderson's efforts to place him in handcuffs, that he was combative and slammed
 2 Officer Anderson against the office door. The videotapes of the incident prove these statements
 3 to be completely untrue.

4 94. The defendants also misrepresented the nature of North's injuries as "minor." In his
 5 written report, Officer Sontgerath states that Dr. Brown "later" advised that North's arm
 6 "appeared" to have been dislocated. However, the audio recording in the ER reveals that Dr.
 7 Brown advised Officer Sontgerath that North suffered a fractured arm, a dislocated elbow and
 8 that the surrounding ligaments had been damaged.

9 95. In addition to their general duty of care, a special relationship existed between
 10 North and the defendants once the defendants responded to North's request for assistance. Once
 11 the defendants responded to North's call for help, a duty arose to exercise reasonable care when
 12 rendering aid and assistance and to duty refrain from conduct that would create or increases the
 13 risk of harm. The conduct of the defendants as alleged herein, affirmative created the dangerous
 14 situation that resulted in North's injuries.

15 96. As a direct and proximate result of this conduct, North has suffered and continues
 16 to suffer severe emotional distress, mental anguish and permanent physical injury.

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22 THIRD CLAIM FOR RELIEF
 23 **Disability Discrimination**

24
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 DEMAND FOR JURY TRIAL - 26

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97. Plaintiff repeats, re-alleges and incorporates herein by reference the allegations of paragraphs 1 through 64, 66 through 83, and 85 through 96 inclusive, as though set forth at length.

98. The ADA and the WLAD guarantee citizens the right to the full enjoyment of all accommodations, advantages, facilities and privileges of law enforcement safety services without discrimination. North was not only denied the privileges of law enforcement safety services, he was affirmatively harmed.

99. Officer Anderson and Officer Sontgerath subjected North to excessive force and seized his person as a direct result of behavior that was the result of his disability. Just prior to the arm fracture, Officer Sontgerath advised North that he was going to be subjected to police force if he continued to "act this way." Officer Anderson told North that he was going to get tased if he did not stop "babbling." Both officers threatened to tase North if he refused to "cooperate." Consistent with such threat, North was tased three times.

100. As a direct and proximate result of this conduct, North has suffered and continues to suffer severe emotional distress, mental anguish and permanent physical injury.

FOURTH CLAIM FOR RELIEF

Outrage

101. Plaintiff repeats, re-alleges and incorporates herein by reference the allegations of paragraphs 1 through 64, 66 through 83, 85 through 96 and 98 through 100, inclusive, as though set forth at length.

102. The acts and omissions of the Defendants, as alleged herein, are so outrageous, atrocious and extreme that they go beyond all possible bounds of decency and are utterly

intolerable in a civilized community. These acts were carried out intentionally and/or recklessly with a reckless indifference for the foreseeable emotion harm.

103. As a direct and proximate result of this conduct, North has suffered and continues to suffer severe emotional distress, mental anguish and permanent physical injury.

FIFTH CLAIM FOR RELIEF
Battery

104. Plaintiff repeats, re-alleges and incorporates herein by reference the allegations of paragraphs 1 through 64, 66 through 83, 85 through 96, 98 through 100, and 102 through 103, inclusive, as though set forth at length.

105. The force alleged herein constitutes harmful and/or offensive contact that was carried out with the intent to bring about the harmful and/or offensive conduct.

106. As a direct and proximate result of this conduct, North has suffered and continues to suffer severe emotional distress, mental anguish and permanent physical injury.

SIXTH CLAIM FOR RELIEF Assault

107. Plaintiff repeats, re-alleges and incorporates herein by reference the allegations of paragraphs 1 through 64, 66 through 83, 85 through 96, 98 through 100, 102 through 103 and 105 through 106, inclusive, as though set forth at length.

108. Officer Anderson and Officer Sontgerath committed acts that were designed and intended to cause North to fear or apprehend immediate harmful and/or offensive contact. North felt and experienced such fear and apprehension.

109. As a direct and proximate result of this conduct, North has suffered and continues to suffer severe emotional distress, mental anguish and physical injury.

PRAYER FOR RELIEF

DEMAND FOR JURY TRIAL - 28

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1 WHEREFORE, North seek judgment and prays for relief against the defendants, as
2 follows:

- 3 1) Special damages according to proof;
4 2) General damages for pain, suffering, emotional distress, anguish and humiliation,
5 according to proof;
6 3) Punitive damages as against Doug Anderson, Mike Officer Sontgerath, Gary
7 Jenkins and Christian Tennant;
8 4) Attorneys' fees, costs and expert witness fees pursuant to statute, including but
9 not limited to 29 USC §§ 794a; 42 USC §§ 1988, 12203, 12205 and 2000a-3; and RCW
10 49.60.030; and
11 5) All other relief that this court may deem just and proper.

12 Dated: August 15, 2018

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26 DEMAND FOR JURY TRIAL - 29

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Dated: August 15, 2018

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Jury Demand

North hereby demands a trial by Jury, pursuant to FRCP 38, as to all issues so triable.

Dated: August 15, 2018

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DEMAND FOR JURY TRIAL - 30

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